

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DENNIS BRITTENHAM,

Plaintiff,

Case No. 09-14913

Honorable Denise Page Hood

v.

WHITE, Corrections Officer,

Defendant.

**ORDER ACCEPTING REPORT AND RECOMMENDATION
and
DISMISSING ACTION**

This matter is before the Court on Magistrate Judge R. Steven Whalen's Report and Recommendation, dated January 14, 2011 [Doc. No. 14]. The time to file Objections has passed and no Objections have been filed to date.

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a *de novo* determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made." 28 U.S.C. § 636(B)(1)(c). The Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate." *Id.*

In order to preserve the right to appeal the Magistrate Judge's recommendation, a party must file objections to the Report and Recommendation within fourteen (14) days of service of the Report and Recommendation. Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th

Cir. 1981).

A Motion for Summary Judgment was filed by Defendant on April 16, 2010. No response was filed by Plaintiff to the Motion for Summary Judgment. The Magistrate Judge issued a Report and Recommendation on January 14, 2011, finding that Plaintiff did not exhaust his administrative remedies as to the incident at issue. A search of the Michigan Department of Corrections' database revealed that Plaintiff's latest grievances occurred in 2006, predating the November 12, 2009 incident by two years. Plaintiff filed no Objections to the Report and Recommendation.

The Court agrees with the Magistrate Judge that Plaintiff failed to exhaust his administrative remedies prior to filing this action against Defendant. The Court accepts and adopts the Magistrate Judge's conclusion and recommendation that the claims against Defendant be dismissed without prejudice. Accordingly,

IT IS ORDERED that Magistrate Judge R. Steven Whalen's January 14, 2011 Report and Recommendation [**No. 14, 1/14/2011**] is ACCEPTED and ADOPTED as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [**No. 9, filed 4/15/2010**] is GRANTED.

IT IS FURTHER ORDERED that this action is DISMISSED without prejudice.

s/Denise Page Hood

Denise Page Hood

UNITED STATES DISTRICT JUDGE

Dated: February 28, 2011

I hereby certify that a copy of the foregoing document was mailed to Dennis Brittenham #252929, Gus Harrison Correctional Facility, 2727 E. Beecher Street, Adrian, MI 49221 and the attorneys of record on this date, February 28, 2011, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Relief Case Manager, (313) 234-5165